

PBS

Wetlands Impact Management Desk Guide

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Chapter 1 - Introduction

1.1 PURPOSE

This Desk Guide is designed to help General Service Administration (GSA) employees and contractors ensure that GSA's policies and procedures for the management of impacts on wetlands are fully and properly implemented. These policies and procedures are set forth in ADM 1095.5, "Consideration of wetlands in decisionmaking". The ADM Order and this Desk Guide are based on government-wide direction provided in Executive Order (EO) 11990, "Protection of Wetlands," Title 33 Code of Federal Regulations (CFR) 320-330 by the United States Army Corps of Engineers (COE) under the authority of Section 404 of the Clean Water Act (33 United States Code 1344), the National Environmental Policy Act (NEPA), and other authorities. See **Appendix 1** for a list of regulations and Orders pertinent to Wetlands.

EO 11990, "Protection of Wetlands," directs Federal agencies to provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance wetlands. Specifically, the EO requires:

[E]ach agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

Executive Order 11990

Together, ADM 1095.5 and this Desk Guide describes GSA's program for compliance with EO 11990, Section 404 of the Clean Water Act, and related authorities dealing with the management of impacts on

wetlands. By itself, this Desk Guide is not a mandatory authority that GSA personnel must follow. However, following it is generally necessary to the orderly implementation of ADM 1095.5.

This Desk Guide is meant to be used with the PBS NEPA Desk Guide, a companion GSA publication on compliance with the NEPA pursuant to ADM 1095.1F, "Environmental considerations in decisionmaking."

1.2 REQUESTS FOR AUTHORIZATIONS OR APPROPRIATIONS

When congressional authorization or appropriation is necessary for the proposed actions, the request to OMB must indicate the action is in compliance with the policy and provisions of EO 11990.

1.3 APPLICATION OF THIS DESK GUIDE

The policies, procedures, and practices described here apply to GSA actions, including leasing, acquiring, developing, managing and disposing of real property, that may have an impact on wetlands. They apply to all GSA business lines, GSA staff, contractors, and others who operate under GSA oversight.

1.4 DEFINITIONS

1.4.1 Action. An "action" is any GSA activity which involves: acquiring, developing, managing, and disposing of Federal lands and public buildings; providing federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use.

1.4.2 Construction. “Construction” includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the May 1977 issuance of EO 11990.

1.4.3 Discharge of Dredged Material. 33 CFR 328 provides a detailed definition of “discharge of dredged material.” In essence, this constitutes the introduction of dredged material into waters of the United States, including the redeposit of dredged material other than incidental fallback. This specifically includes, but is not limited to:

- (a) the addition of dredged material to a specified discharge site located in waters of the United States;
- (b) runoff or overflow from a contained land or water disposal area;
- (c) any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States, including mechanized landclearing, ditching, channelization, or other excavation.

Discharge of Dredged Material does not include:

- (d) discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State section 404 program;
- (e) activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; or

- (f) incidental fallback.

1.4.4 Dredged Material. As pertaining to the COE regulations, “Dredged Material” includes any material that is excavated or dredged from a wetland or other waters of the United States.

1.4.5 Fill Material. “Fill Material” is any material used for the primary purpose of replacing an aquatic area with dry land, or of changing the bottom elevation of a water body.

1.4.6 Practicable Alternatives. Under GSA, “Practicable alternatives” are those which:

- (a) meet justified program requirements;
- (b) are within the legal authority of GSA or its client agency;
- (c) meet technological standards;
- (d) are demonstrated as being cost effective; and
- (e) do not result in unreasonable adverse environmental impacts.

1.4.7 Structure. As defined in 33 CFR 322.2, the term “structure” includes “without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.” A building foundation should be considered a “piling.”

1.4.8 Waters of the United States. The regulatory definition of “Waters of the United States” is given in 33 CFR 328.3. Waters of the U.S. constitute:

- (a) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate commerce or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

- (b) all interstate waters including interstate wetlands;
- (c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use of which could affect interstate or foreign commerce (specific examples of such commerce being re-creational purposes, commercial fishing, and industrial use);
- (d) all impoundments of water otherwise defined as waters of the United States;
- (e) tributaries of the above-described waters;
- (f) the territorial seas; and
- (g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified above.

1.4.9 Wetlands. “Wetlands” are those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river outflows, and mud flats, and natural ponds. Wetlands are often associated with floodplains, but may also occur in other situations. For instance, a wetland may also be formed and maintained by a high water table in areas with shallow depressions in the topography.

1.5 CHANGES TO THIS DESK GUIDE

GSA PBS Division of Environmental Business Strategies (PXE) may issue updates, changes, or corrections to this Desk Guide.

Chapter 2 – Responsibilities for Wetlands Impact Management

2.1 DIRECTOR, DIVISION OF ENVIRONMENTAL BUSINESS STRATEGIES (PXE)

- ?? Advises the Administrator, Commissioner, other Heads of Services and Business Lines, Regional Administrators, and other GSA managers and staff regarding how to address impacts on wetlands;
- ?? Coordinates compliance with ADM 1095.5 and the laws, Executive Orders, and regulations it implements;
- ?? Provides advice and assistance to Regional Environmental Quality Advisors (REQA) regarding wetland matters;
- ?? With the cooperation of Services, Business Lines, and Regional Offices, provides guidance, education, training, and advice about education and training standards and opportunities to GSA personnel who have responsibilities that may impact a wetland;
- ?? Coordinates with the U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA) and other agencies involved in wetland impact management at the national level;
- ?? Represents GSA in interagency coordination on matters related to wetland management on a national basis;
- ?? Routinely solicits and acts upon the advice of Regional Environmental Quality Advisor (REQA) and Field Office personnel in developing program direction and carrying out the

responsibilities of the Division; and

- ?? Promulgates, maintains, and when necessary updates this “Wetlands Impact Management Desk Guide” providing detailed direction and advice regarding implementation of wetland responsibilities.

2.2 REGIONAL ADMINISTRATORS

- ?? Are responsible for compliance with ADM 1095.5 and this Desk Guide;
- ?? Maintain a reasonable body of expertise regarding wetland matters in the staff of the REQA and/or Field Office personnel as described in PBS NEPA Desk Guide and ensure that the REQA has access to appropriate professional wetland management expertise; and
- ?? Ensure that all Regional and/or Field Office program staff involved in planning and decision making about actions that could affect wetlands are made aware of GSA's wetland management responsibilities, are acquainted with this Desk Guide and ADM 1095.5, are held accountable for the quality of their actions and decisions, and are required to coordinate effectively with the REQA on wetland matters.

2.3 PROGRAM STAFF

For the purposes of this Desk Guide, program staff includes all GSA employees responsible for the management and implementation of program actions, such as project planning and development, acquisition of real property by purchase, exchange or eminent domain, project management, leasing, and disposal of real property.

Program staff are responsible for:

responsibilities, through performance reviews and other administrative mechanisms.

- ?? With the assistance of the REQA, developing and maintaining a thorough understanding of wetland management requirements, principles, and procedures, and of the policy articulated in ADM 1095.5, as these pertain to their program areas;
- ?? Ensuring that GSA's wetland management responsibilities are met to the best of their abilities, as early as possible in planning any action within their program areas;
- ?? Coordinating their programs, activities, and projects with the REQA; and
- ?? Implementing all mitigation and other commitments resulting from compliance with this Desk Guide for actions under their authority.

2.4 OTHER PROGRAM REQUIREMENTS

Each Head of Service, Business Line, and Regional Office shall establish internal systems to ensure that the requirements of ADM 1095.5 and this Desk Guide are carried out.

Each such system shall ensure that:

- ?? Compliance with this Desk Guide begins early in planning any action, when the widest reasonable range of alternatives are open for consideration;
- ?? Consideration of wetlands impacts, and application for and receipt of permits from the COE, are conducted in coordination with continuing planning; and
- ?? Employees responsible for managing impacts to wetlands are held accountable for the performance of such

Chapter 3 – Overview of the COE Permitting Process For the Discharge of Dredged and Fill Material

3.1 INTRODUCTION

If GSA proposes a project that will involve discharge of dredged or fill material into a waterway or a wetland, it must follow a very specific regulatory procedure. Discharge into a wetland without a permit is a violation of the Clean Water Act and can result in issuance of compliance orders, civil actions, and criminal prosecution of GSA employees, contractors, and others involved.

Sections 9 and 10 of the Rivers and Harbors Act, and Section 404 of the Clean Water Act together provide to the COE the authority to regulate construction in navigable waters of the United States, and the discharge of dredged or fill material into all waters of the United States, including wetlands. All types of activities involving the discharge of fill into a wetland are subject to regulation. For example, the disposal of debris from a construction or demolition site into a wetland, or discharges associated with landscaping, fall under the regulatory authority of the COE.

The COE carries out its regulatory responsibilities under the Rivers and Harbors Act, the Clean Water Act, and related Federal laws using uniform rules set forth at 33 CFR 320-330. Title 33 CFR 325 provides specific direction about how to obtain a COE permit to discharge fill material into a wetland. Under the Clean Water Act, discharging fill into a wetland without a permit issued by the COE under its regulations is an offense punishable by civil actions and criminal prosecution.

In addition to Section 404 permitting, certain discharges of dredged or fill material into waters of the United States, including

wetlands, are also regulated by the COE under the aforementioned Rivers and Harbors Act. Although not discussed in detail in this guidance, you should be aware that Section 10 of this Act includes regulations for structures or work in or affecting navigable waters of the United States, including wetlands adjacent to navigable waters. Section 9 of the Rivers and Harbors Act is applicable to dams and dikes in navigable waters.

This chapter of the Wetlands Impact Management Desk Guide provides an overview of the general steps required to obtain a COE permit, and **Exhibit 3-1** illustrates the typical COE review process for Section 404 standard permits. You should be familiar with this process to ensure that GSA—or its contractor—is in compliance with the COE requirements and EO 11990.

3.2 DETERMINING WHETHER A COE PERMIT IS NEEDED

3.2.1 Determining if an Action May Result in a Discharge

The first step in determining whether a COE permit is required is to determine whether the proposed action is the kind of action that could result in a discharge. Consider the following questions:

- (a) Does the action involve new construction? New construction always has the potential for discharges. Discharges may result from site preparation, the construction itself (dumping fill upon which buildings are built, placing pilings, etc.), from disposal of debris from demolition of existing structures, grading, or excavation, or

from both.

- (b) Does the action involve renovation? Renovation may result in discharges of demolition debris (including debris from interior demolition) and/or spoil from utility trenching, excavation for seismic retrofit, excavation for new subsurface facilities, or foundation work.
- (c) Does the action involve landscaping, road construction, remediation or other work that requires grading, trenching, or other land treatment that could produce fill or permit runoff and erosion?

If the action involves no potential discharges, then there is no need for a COE permit. If there is a potential discharge, then proceed to the next step.

3.2.2 Determining the Area(s) Within Which a Discharge May Occur

If there is a potential discharge, consider where it may occur. Consider:

- (a) The project construction site or other direct impact area.
- (b) The location(s) where debris, spoil, or other material will be disposed of.
- (c) Areas that might be affected by erosion or deposition resulting from the action.

3.2.3 Determining the Presence or Absence of a Wetland

Are wetlands present in any of the areas where there may be a discharge? Remember that wetlands are not necessarily wet all year-around.

“Wetlands” are land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are

covered by water or have waterlogged soils for significant periods during the growing season—that is, the average period between the last killing frost in the spring and the first killing frost in the fall. Wetland plants are capable of living in soils lacking oxygen for at least part of their growing seasons. Types of wetlands include, but are not limited to, bottomland forests, swamps, pine savannas, sloughs, mud flats, bogs, marshes, wet meadows, potholes and wet tundra. Wetlands may also develop in low areas created by human activity, such as large collapsed cellar holes and drainage ditches.

An area is likely to be a wetland if any of the following conditions exist:

- ?? The area is in a floodplain.
- ?? The area has low spots in which water stands for more than seven consecutive days during the growing season, as indicated by soil that glistens with water, water marks on trees or posts, drift lines or other debris piles oriented in the direction of water movement, debris lodged in trees or piled against other objects, or thin layers of sediment. Note that many wetlands actually lack both standing water and waterlogged soils during at least part of the.
- ?? The area has plant communities that commonly occur in areas having standing water for part of the growing season. Some 5,000 different plant species are commonly associated with wetlands in different parts of the country; a listing of wetland plants that occur in specific areas can be obtained from the COE. Examples of plant types associated with wetlands include cattails, bulrushes, skunk cabbage, cordgrass, sphagnum moss, bald cypress, willows, mangroves, sedges, rushes, arrowheads and water plantains. Other indicators are trees such as willows, alders, red maples, sycamores, and bushes or trees with

shallow root systems, swollen trunks, or roots growing from the plant trunk above the soil surface.

?? The area has peat, muck, or gleyed soils, substantial amounts of decomposing plant material on the surface, dark streaks of buried organic matter, or a sulfurous, "rotten egg" smell.

?? The area is periodically flooded by tides.

Some wetlands may have been "delineated" and a current map is available. A good source is the U.S. Fish & Wildlife Service's National Wetlands Inventory (www.nwi.fws.gov/) If a current map is not available, the wetland must be delineated in accordance with the COE's 1987 Wetlands Delineation Manual, or according to applicable State standards, whichever is more rigorous. Wetland delineation is the identification of wetlands, their boundaries, and their characteristics. A model Wetland Delineation Scope of Work (SOW) is included in **Appendix 4**.

Wetland delineation must result in a written report, which should provide the following information:

?? Wetland delineation maps showing the size, location, configuration, and boundaries of each wetland, together with local landmarks for orientation; sample plot locations; names of water features; a north arrow; scale, and date, and the names of the people who conducted the delineation;

?? Wetland delineation forms from the Wetland Delineation Manual or State standards, or similar data sheets, for each sample site, clearly listing the soil, vegetation, and hydrological indicators used to determine the presence of a wetland;

?? An overall vicinity map identifying the locations of study areas; and

?? A narrative describing the methods employed, identifying the wetlands found, and integrating the information outlined above.

3.2.4 Determining Whether There Will Be a Discharge Into a Wetland

It may be possible to determine that the discharge will impact a wetland by overlaying project plans, including plans showing where spoil and other material will be disposed of, on the wetlands map for each alternative.

If it is determined that a COE permit may be required for an activity involving a wetland or other waters of the United States, GSA's contractor should request a pre-application consultation with the appropriate COE district office. COE staff can advise potential applicants of information foreseeably required for permit applications, such as the identification of potential alternatives to avoid and minimize project impacts, mitigation opportunities, and other factors which must be considered by the COE in the permit decision making process.

3.3 TYPES OF COE PERMITS

The COE issues both general permits and individual permits. There are three types of general permits for various activities with minimal impact to wetlands and other waters of the United States. Individual permits are issued for activities that do not fall within the criteria for a general permit. Early coordination with the COE can help identify which type of permit is needed for your specific action.

3.3.1 General Permits

Many minor actions fall within existing general permits that have been issued to the public at large by the COE on a regional and nationwide basis for a category, or categories of activities. The activities under a general permit may only result in minimal

individual or cumulative impacts. The approval process for general permits is much less time and labor-intensive than that for an individual permit. Avoidance and minimization of impacts should always be the first consideration in project planning, and you should consider that by modifying an action by these means, its impacts to wetlands may be reduced to a degree that it can fall under the requirements of a general, rather than an individual, permit.

There are three types of general permits: programmatic, regional, and nationwide. Because programmatic and regional general permits vary widely from state to state and region to region, this Desk Guide will focus on the application and evaluation of the more common nationwide general permits (NWP).

3.3.1.1 Programmatic and Regional General Permits

Programmatic general permits are general in scope, based on existing regulatory programs of other agencies, and are intended to avoid duplication of effort. Regional general permits apply to certain minor activities authorized by the COE Districts on a regional or statewide basis, and are issued by a COE division or district engineer after notice and opportunity for public hearing. Regional general permits are issued using the same procedures prescribed in the regulations for individual permits.

3.3.1.2 Nationwide General Permits

Nationwide general permits are a type of permit that represent COE authorizations issued by 33 CFR part 330 for specified activities on a nationwide basis. If certain conditions are met, then the activity can proceed without either an individual or regional permit. There are several different types of NWPs, covering activities such as construction of Outfall Structures and Maintenance (NWP #7), Linear Transportation Crossings (NWP #14),

Residential, Commercial and Institutional Developments (NWP#39), and Stormwater Management Facilities (NWP #43). See Appendix 2 for a sample list of NWPs.

NWP #39 lists government office buildings and judicial buildings as examples of institutional developments. Activities under NWP #39 are authorized if they meet certain specific conditions, including not causing the loss of more than ½ acre of non-tidal waters of the United States, and not causing the loss of more than 300 linear feet of stream bed. If the discharge causes the loss of more than 1/10 acre of waters of the United States, a Preconstruction Notification (PCN) must be made to the COE before the start of work. If the discharge causes the loss of an 1/10 acre or less, GSA must submit a report within 30 days of completion of the work to the COE District Engineer. The report should contain the following information: 1) the name, address and telephone number of the permittee; 2) the location of the work; 3) a description of the work; 4) the type and acreage of the loss of waters; and 5) the type and acreage of any compensatory mitigation used to offset the loss.

If the action meets the terms and conditions of the applicable NWP, GSA and/or its contractor can usually proceed with the action. Although notification pertaining to your specific action may not be required, it is important to know that the COE districts and divisions have the final authority to modify, override, or condition NWPs: it is necessary for GSA and/or its contractor to be aware of any conditions which the applicable COE district may have added to the general conditions listed in 33 CFR part 330.4.

3.3.2 Individual Permits

An individual permit is an authorization issued by the COE following an evaluation of a specific activity, the scope of which does not allow permitting under a general permit and for which avoidance and/or

modification to minimize impacts to the level of a general permit is not feasible. Specific requirements for obtaining an individual permit are described in Section 3.4. The process for a standard individual permit is illustrated in **Exhibit 3-1**, and includes public notice, the opportunity for a public hearing, and receipt of comments. Consultation with other regulatory agencies, such as the U. S. Fish and Wildlife Service, may also be a part of the individual permitting process. In some cases, the COE may notify GSA or its contractor upon receipt of a permit application that the proposed activity qualifies for a Letter of Permission, or LOP. For routine or minor work with minimum impacts and a decreased likelihood of public objections, an LOP can be issued much more quickly than a standard individual permit.

3.4 OBTAINING A COE PERMIT

3.4.1 Nationwide Permits

As stated in 3.3.1.2, many nationwide permits do not require COE notification, however, GSA and its contractor should be aware of any additional items that the applicable COE District may have added to the general conditions of these permits, or if the specific NWP requires notification.

33 CFR 330.4 states that “[a] prospective permittee must satisfy all terms and conditions of an NWP for a valid authorization to occur.” The COE reserves the authority to determine if an activity complies with the terms and conditions of a NWP, whether there has been notification or not. There also exist some restrictions on NWPs pursuant to other Federal, state, and local authorizations. For instance, 33 CFR 330.4(f) states that an activity which is “likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Endangered Species Act, or to destroy or adversely modify the critical habitat of such species” cannot be authorized by a NWP. The regulation also includes conditions,

limitations, and restrictions pertaining to the requirements of Section 401 of the Clean Water Act, the Coastal Zone Management Act, and the National Historic Preservation Act.

COE guidance on nationwide permits can be found at www.usace.army.mil. NEPA Call-In can also help obtain current guidance regarding current procedures pertaining to all COE permits.

3.4.2 Individual Permits

If at all possible, discharge of dredged or fill material into a wetland should be avoided. This may require some modification of the proposed action. If this is not feasible and a NWP does not apply, an individual permit will need to be obtained before the action can proceed. Application for an individual permit must follow 33 CFR 325.1, the requirements of which are summarized below. Responsible program staff should become thoroughly familiar with this and other pertinent COE regulations. A list of agency addresses for use in permit consultation is found in Appendix 5.

3.4.2.1 Individual Permit Application

(a) Application form. ENG Form 4345, “Application of a Department of the Army Permit,” or a joint Federal-state application that may be available in your state, is required to begin the review process. These forms vary from region to region, therefore it is essential that you obtain the appropriate form from the COE regulatory office in the area where the proposed action is located.

(b) Content. The application must include:

?? A complete description of the proposed action, including drawings, sketches, or plans for use by the COE in issuing a public notice. Detailed engineering plans and specifications are not required and may not be desirable; remember that

the COE will issue its public notice in an 8.5x11" format.

- ?? The specific location(s) of the action.
- ?? A statement of the action's purpose and need.
- ?? The planned schedule for completing review of, and carrying out, the action.
- ?? The names and addresses of pertinent property owners, including the owners of lands involved in the action and adjacent properties.
- ?? The locations and dimensions of adjoining structures.
- ?? A list of authorizations needed, received, or denied from other Federal, interstate, State, regional or local agencies.
- ?? The type, composition and quantity of any material to be dredged.
- ?? The source, type, composition and quantity of any material to be discharged into a wetland.
- ?? The means by which any such material will be transported.
- ?? The location of any disposal site.
- ?? Any special structures to be employed, such as filled areas or pile or float-supported platforms.
- ?? Any impoundment structure.
- ?? Any proposed artificial reef.
- ?? Other information requested by the district or division engineer for purposes of the public notice (33 CFR 325.3) or other purposes.

(c) Scope. The application must cover all connected actions that GSA and, where applicable, the offeror or cooperating agency intend to carry out that are reasonably related to the action and which might require a permit. For example, if the GSA project is a single building in a complex being developed for lease to multiple agencies of the Federal and state governments, the application should describe the entire complex. If the GSA project is a building that requires a new street for access, the application should cover the street as well as the building.

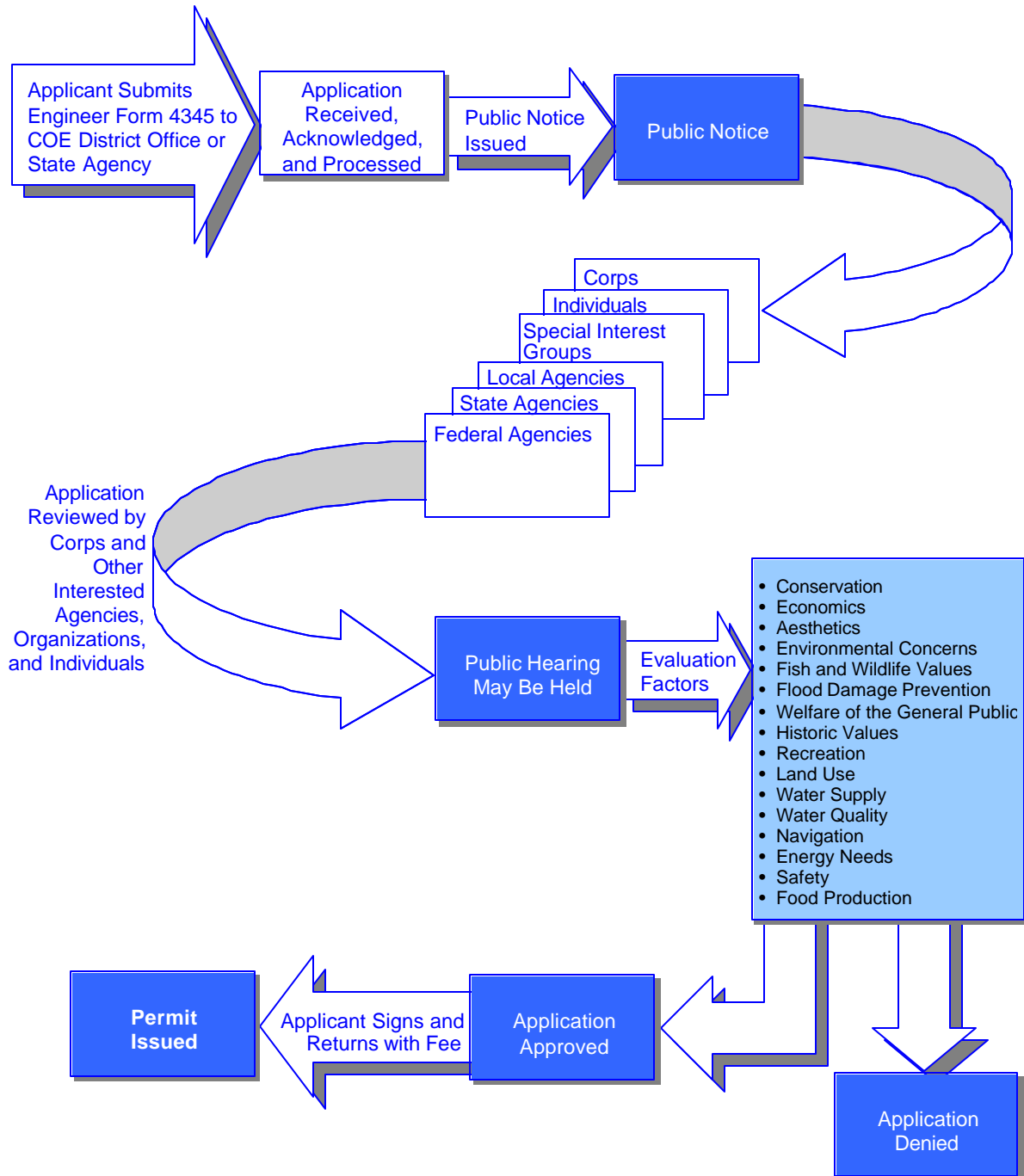
(d) Signature. The application must be signed by the applicant/lessor, developer, or construction contractor.

3.4.2.2 Post-Application Consultation and Cooperation

Once the application has been filed, the COE is responsible for seeking and considering public comment on the proposed activity, determining compliance with related federal laws, coordinating with other federal agencies, and ultimately determining if an activity can be permitted. The COE's procedures for application processing are spelled out in 33 CFR 325.2. Program staff and the REQA should consult and cooperate with the COE in carrying out its review of the application; in preparing, distributing, and considering responses to the public notice; and in reaching its permit decision.

The COE may conclude that an EIS is needed under NEPA, even in cases where GSA has determined that one is not needed. When the COE determines that an EIS is needed to obtain its authorization, GSA must cooperate with the COE and prepare an EIS. The COE must also carry out its own compliance with such other authorities as the Endangered Species Act and the National Historic Preservation Act. Program staff, the REQA, the Regional

Exhibit 3-1 Typical Steps in COE Standard Permit Review Process



Historic Preservation Officer, and other pertinent GSA personnel should work with the COE to coordinate the COE's compliance requirements with GSA's.

3.4.2.3 Issuance or Denial of the Permit

Ultimately, the COE will either issue or deny the permit. If the permit is issued, the COE may include conditions that GSA and/or its contractor is required to fulfill in order to mitigate environmental impacts. These conditions may not be limited to those necessary to control impacts on wetlands; they may involve impacts on endangered species, historic properties, social factors, natural resources, traffic, economics, visual factors, and other aspects of the environment.

3.4.2.4 GSA's Decision

GSA's decision on the action must be consistent with the terms of the COE permit, and must incorporate and ensure implementation of any permit conditions. *No project involving discharge of dredged or fill material into a wetland may go forward without a COE permit.*

3.4.2.5 Mitigation and Monitoring

Unless a proposed action is water dependent, the COE guidelines presume the existence of alternatives which would not impact waters of the United States. GSA or its contractor may be required to provide information regarding alternatives considered which would avoid impacts altogether, or if this is impractical, show measures taken to minimize impacts to aquatic resources such as wetlands. Further mitigation through compensation for resources or replacement of resources may be required, depending upon the nature and value of the resource. These types of mitigation are referred to as compensatory mitigation, and can include creating aquatic resources where none existed previously, restoring resources where they previously existed, or enhancing existing resources to

increase function and values. The applicability and extent of the alternatives analysis and appropriate levels of mitigation is determined through close coordination on a case by case basis during the permit evaluation process.

Whatever mitigation measures are stipulated in the COE permit, as well as any other mitigation measures the responsible GSA official determines to be appropriate, must be implemented. Effective and enforceable measures must be put in place, and documented in the FONSI or ROD under NEPA, to ensure that implementation occurs. Ongoing monitoring must be provided for to ensure that mitigation measures are carried out in an orderly manner, and brought to completion.

3.5 LEASING ACTIONS

3.5.1 Leasing in Existing Structures

Where the space needs of a GSA customer can be satisfied using space in an existing structure (and there will be no excavation or other actions that might result in the discharge of fill to a wetland), no action is needed to consider effects on wetlands. Interior alterations or renovations in existing buildings do not require consideration of impacts to wetlands.

3.5.2 Lease Construction and Other Lease Actions Involving Discharges

Where a lease may result in a discharge to a wetland (for example, placement of dirt or debris from a renovation project in a wetland), GSA's Solicitation for Offers (SFO) should stipulate that the offeror obtain COE authorization or notify GSA that such authorization is not necessary. To comply with ADM 1095.5, program staff should also:

- (a) Ensure that all offerors include in their initial offers an assessment of the

likelihood that construction will adversely impact a regulated wetland (language to this effect should be included in GSA's SFO).

- (b) Ensure that each offeror invited to submit best and final offers include in their offer either a written determination that selection of the offer will not result in the discharge of fill into a wetland, or a qualified written estimate of the cost of obtaining and complying with a written COE authorization for the discharge. The determinations and cost estimates should be based upon either a wetland delineation performed by the COE or a COE certified delineator, or, when a delineation is not necessary, a signed statement to that effect from the COE. **Appendix 3** provides standard language for use in ensuring that offerors provide the requisite information.
- (c) When it is known that there will be an impact to a wetland, the impact is included in the appropriate NEPA document and is brought to the attention of the appropriate REQA.

3.6 DISPOSAL OF FEDERAL REAL PROPERTY

When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Executive Order 11990

Where GSA disposes of Federal real property, program staff may comply with EO 11990 and ADM 1095.5 by considering potential impacts on wetlands as part of NEPA review, and by providing notice through the invitation for bids (IFB) that all

potential and future recipients of the property will be responsible for complying with all Federal, State and local wetlands regulations.

3.7 WHERE NO COE PERMIT IS REQUIRED

Where a COE permit is not required because no discharges into wetlands or other waters of the U.S. will occur as such, other direct and indirect impacts on wetlands must nevertheless be considered in reaching a decision about whether and how to proceed with the project, and mitigation measures must be implemented as needed. NEPA documents should demonstrate consideration of the following kinds of effects on wetlands, to the extent they are applicable to the action under review.

- (a) Effects that may influence water supply, quality, recharge and discharge, or pollution;
- (b) Effects that may exacerbate flood and storm hazards;
- (c) Effects on the natural systems upon which wetlands depend, through changes in flora and fauna, species and habitat diversity, hydrological utility, fish, wildlife, timber, and food or fiber resources;
- (d) Potential changes in the recreational, scientific, or cultural uses of wetlands (for example, by blocking access to them);
- (e) Non-federal actions that would not occur but for the GSA action, such as development of a commercial mall that involves use of a parcel of surplus Federal property;
- (f) Secondary effects beyond GSA's control, such as reasonably foreseeable stimulation of housing or office

development in the vicinity of a Federal building.

All such effects are considered in the context of a COE permit application, but even where such an application is not required because there will be no actual discharge into a wetland, GSA must nevertheless consider them under NEPA and EO 11990.

Chapter 4 - Coordination with Other Authorities

4.1 COORDINATION WITH NEPA

Consideration of impacts on wetlands should be a routine part of GSA's environmental analysis performed under NEPA, including analyses performed to screen categorical exclusions, analyses performed to develop environmental assessments (EAs), and analyses carried out as part of environmental impact statement (EIS) preparation. All types of impacts on wetlands, including direct, indirect, and cumulative impacts, must be considered (see ADM 1095.1F and the PBS NEPA Desk Guide for direction on NEPA compliance). An example of a direct impact on a wetland would be draining the wetland. An example of an indirect impact would be to reduce or increase the local water table to a point at which the moisture content of the wetland would be affected. An example of a cumulative impact would be disposal of a property by transfer to a party that would develop it as part of a general pattern of local development resulting in wetland deterioration.

4.1.1 Categorical Exclusion Actions (CATEX)

(a) *Automatic CATEXs.* The automatic categorical exclusion actions listed in Section 5.3 of the PBS NEPA Desk Guide generally have so little potential for impact on wetlands that they require no review of such impacts. However, a few of these CATEXs have some marginal potential for discharge into a wetland, and should be subjected to the abbreviated review described below for checklist CATEXs. The automatic CATEXs that should be given some review are:

?? 5.3(f) Outlease or license of government-owned space;

?? 5.3(g) Acquisition of land or easements;

?? 5.3(j) Repair and alteration projects where there is no evidence of controversy;

?? 5.3(k) Repairs and alterations in accordance with applicable plans; and

?? 5.3(l) Repair and replacement in kind.

(b) *Checklist CATEXs.* When completing Checklist Question A on the CATEX Checklist (See PBS NEPA Desk Guide p. 5-12), take the following steps:

?? Determine whether the action will involve the discharge of dredged or fill material, including but not limited to soil, stone, rubble, construction (including renovation) debris, or construction of buildings, berms, dikes, or dams, or the placement of pilings in the ground. If not, no COE permit is required, though further consideration of direct, indirect, or cumulative effects *not* involving discharges may be required under NEPA (See Checklist Questions B, D, E, F, G, I, and J).

If a discharge may occur, determine whether it may occur in a wetland. Making this determination may require review of maps and other documents as well as some field inspection by a knowledgeable party. Be sure to consult the Regional Environmental Quality Advisor (REQA) or Field Office personnel. Be sure to consider the project construction site (if any) site preparation and staging areas, and any place where discharge of construction debris, spoil, or other material may occur. If

you don't know whether there might be a wetland involved a wetland delineation as discussed in Section 3.4 may be necessary.

4.1.2 Environmental Assessments and Environmental Impact Statements

Each EA and EIS prepared pursuant to the PBS NEPA Desk Guide must address impacts on wetlands. This can be done either by documenting that the action analyzed in the EA has no potential for such impacts, or by describing such impacts (including the wetland functions that could be impacted), identifying potential mitigation measures or other alternatives, and where a discharge into a wetland will occur, acknowledging the need for a COE permit.

4.2 Coordination with the Coastal Zone Management Act, State Wetland Protection Laws, and Executive Order 11988

Many states have wetland protection statutes and regulations. Coastal states often manage coastal wetlands as part of their Coastal Management Program under the Coastal Zone Management Act (CZMA). Some states also require permits to dredge or fill wetlands. GSA projects must conform to state wetland protection laws. For example, GSA's Federal Acquisition Regulations (Section 52.236-7, "Permits and Responsibilities," November, 1991), states that contractors are "responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work." Therefore, if a proposed lease-construction project could impact a wetland, you should also identify state regulations that may be applicable to the project. Under the CZMA, any development project that could directly affect a wetland in a state's coastal zone may also require GSA to file a consistency determination with the state.

In addition, consider that some wetlands are also in a floodplain. EO 11988, "Floodplain management," established the Federal policy of avoiding direct or indirect support of floodplain development when other alternatives are available. The Federal Emergency Management Agency (FEMA) has established procedures for agencies to follow when GSA finds that there are no practicable alternatives to locating a proposed action in a floodplain.

4.3 PUBLIC INVOLVEMENT

EO 11990 directs agencies to provide an opportunity for early public review of any plan or proposal for new construction in wetlands. To minimize duplication of effort, if GSA's proposed action will require a COE permit, then the public notification process to obtain the permit fulfills the public involvement requirements of EO 11990. Similarly, if GSA's proposed action will require the preparation of an EA or an EIS, the public involvement requirements under NEPA, EO 11990, and COE permit process should be combined as much as possible (see PBS NEPA Desk Guide, Chapter 4).

**APPENDIX 1:
PERTINENT LEGAL AUTHORITIES
RELATED TO WETLAND MANAGEMENT**

Regulations and Orders

Section 404 of the Clean Water Act

Section 10 of the Rivers and Harbors Act

National Environmental Policy Act (NEPA)

Executive Order 11990, "Protection of Wetlands"

ADM 1095.5, "Consideration of Wetlands in Decisionmaking"

Title 33 Code of Federal Regulations Parts 320-330 (not included refer to website below)

See: www.gsa.gov/pbs/pt/call-in/erlsub3.htm#wetl

State and Local Wetland Regulations (not included refer to website below)

See: www.gsa.gov/pbs/pt/call-in/wetlinks.html

Section 404 of the Clean Water Act Permits for Dredged or Fill Material Title 33 US Code (U.S.C.) Part 1344

(a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary “(1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zones, and the ocean under section 403(c), and ”(2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) The term “Secretary” as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e)(1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(e)(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f)(1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).

(f)(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g)(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(g)(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(g)(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h)(1) Not later than the one-hundred- twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under section (b)(1) of this section, and sections 307 and 403 of this Act;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act .

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendation to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable water would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(h)(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State—

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State, and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(h)(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(h)(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(h)(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1) (E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

(k) In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and

Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

(o) A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

(q) Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.

(r) The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.

(s)(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(s)(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(s)(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a

compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(s)(4) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

[Former §404(s)(4) deleted and (5) amended and redesignated as (4) by PL 100-4]

(t) Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

Section 10 of the Rivers and Harbors Act
Obstruction of excavations and filling in of navigable waters generally;
wharves; piers, etc.

Title 33 US Code (U.S.C.) Part 403

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same.

NATIONAL ENVIRONMENTAL POLICY ACT

HISTORY: Public Law 91-190, Jan. 1, 1970; 83 Stat. 852, 42 U.S.C. 4321; Amended by PL 94-52, July 3, 1975; PL 94-83, Aug. 9, 1975

SEC. 2 [42 U.S.C. 4321] Purpose

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101 [42 U.S.C. 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

SEC. 102 [42 U.S.C. 4332]

The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes:

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

SEC. 103 [42 U.S.C. 4333]

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104 [42 U.S.C. 4334]

Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency

- (1) to comply with criteria or standards of environmental quality,
- (2) to coordinate or consult with any other Federal or State agency, or
- (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105 [42 U.S.C. 4335]

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201 [42 U.S.C. 4341]

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth

(1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest dryland, wetland, range, urban, suburban, and rural environment;

(2) current and foreseeable trends in the quality, management and utilization of such environment and the effects of those trends on the social, economic, and other requirements of the Nation;

(3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

SEC. 202 [42 U.S.C. 4342]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203 [42 U.S.C. 4343]

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

SEC. 204 [42 U.S.C. 4344]

It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205 [42 U.S.C. 4345]

In exercising its powers, functions, and duties under this Act, the Council shall--

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206 [42 U.S.C. 4346]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 USC 5313).

The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 USC 5315).

SEC. 207 [42 U.S.C. 4346a] Acceptance of Travel Reimbursement.

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

SEC. 208 [42 U.S.C. 4346b] Expenditures for International Travel.

The Council may make expenditures in support of its international activities, including expenditures for:

- (1) international travel;
- (2) activities in implementation of international agreements; and
- (3) the support of international exchange programs in the United States and in foreign countries.

SEC. 209 [42 U.S.C. 4347]

There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

EXECUTIVE ORDER 11990 PROTECTION OF WETLANDS

HISTORY: Signed May 24, 1977; 42 FR 26961, 3 CFR, 1977 Comp., p. 121

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1.

(a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Section 2.

(a) In furtherance of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

Section 3.

Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Section 4.

When Federally-owned wetlands or portion wetlands are proposed for lease, easement, right-of or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Section 5.

In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Section 6.

As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

Section 7.

As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Section 8.

This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The

provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Section 9.

Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Section 10.

To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter Signed May 24, 1977

WHITE HOUSE

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

GSA ORDER ADM 1095.5
July 31, 2000 (DRAFT)

GSA ORDER

SUBJECT: Consideration of Wetlands in Decisionmaking

1. Purpose. This order establishes policy and assigns responsibility within the General Services Administration (GSA) for implementing the laws and Executive Orders concerning all GSA actions that affect wetlands, consistent with the basic statutory responsibilities governing GSA program operations.

2. Cancellation. ADM 1095.2, dated July 23, 1979, as amended by ADM 1095.2, Chge 1, dated October 31, 1983, is canceled as it pertains to the consideration of wetlands in decisionmaking.

3. Definitions.

a. Action. An “action” is any GSA activity which involves: (1) acquiring, managing, and disposing of Federal lands and public buildings; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use.

b. Wetlands. “Wetlands” are land areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are covered by water or have waterlogged soils for significant periods during the growing season—that is, the average period between the last killing frost in the spring and the first killing frost in the fall. Wetland plants are capable of living in soils lacking oxygen for at least part of their growing seasons. Types of wetlands include, but are not limited to, bottom land forests, swamps, pine savannas, sloughs, mud flats, bogs, marshes, wet meadows, potholes and wet tundra. Wetlands may develop in low areas created by human activity, such as collapsed cellar holes and ditches.

4. Background.

a. The laws, Executive Orders, and programs which are the basis for this order include the National Environmental Policy Act (42 U.S.C. 4321, et seq.), hereinafter referred to as NEPA; Section 404 of the Clean Water Act (33 U.S.C. 1344), hereinafter referred to as Section 404; and Executive Order 11990, “Protection of Wetlands.”

b. The authorities cited above require agencies to evaluate the potential effects of their actions on wetlands, to avoid construction in a wetland unless there is no practicable alternative and all possible measures to avoid, minimize or compensate for harm to the wetland have been included, and to obtain authorization from the United States (U.S.) Army Corps of Engineers (COE) before discharging dredged or fill material into waters of the U.S. (i.e. wetlands).

Discharge of dredged or fill material into waters of the U.S. without authorization from the COE may result in issuance of compliance orders, civil actions, and criminal prosecution of GSA employees, contractors, and others involved.

5. Policy. *GSA will not carry out or sanction any discharge of dredged or fill material into a wetland unless authorized by the COE in accordance with the COE's applicable regulations.*

6. Responsibilities.

a. The Head of the Service or Staff Office or Regional Administrator under whose jurisdiction an action is being planned, hereinafter referred to as the responsible official, is responsible for the implementation of this order.

b. The responsible official shall take no action involving the discharge of dredged or fill material into a wetland unless the responsible official has obtained authorization from the COE in accordance with Section 404 of the Clean Water Act and its permitting regulations (33 CFR 320-330).

c. The Commissioner, Public Buildings Service (PBS), who acts for the Administrator on environmental matters, shall provide further direction and guidance regarding implementation of this order. The responsible official shall ensure that the procedures set forth in this Order and the Wetlands Desk Guide are followed in meeting GSA's responsibilities regarding wetlands.

7. Applicability. This order applies to all GSA program actions, including but not limited to:

a. Real property acquisition through Federal construction, purchase, or lease, including lease extensions,

b. Public buildings design and construction,

c. Public buildings alteration,

d. Public buildings operation,

e. National strategic and critical materials stockpile management and operation, and

f. Disposal of any interest in surplus real property to non-Federal public or private parties.

8. Wetland Impact Management Desk Guide. All Heads of Service, Business Lines, and Regional Offices will employ the Wetland Impact Management Desk Guide issued and periodically updated by the PXSC as guidance in carrying out this order.

9. Effective Date. Every effort shall be made to implement the provisions of this order immediately.

DAVID J. BARRAM
Administrator

APPENDIX 2: INDEX OF NATIONWIDE PERMITS DECEMBER 13, 1996 (MODIFIED MARCH 9, 2000)

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Maintenance
8. Oil and Gas Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Crossings
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. Headwaters and Isolated Waters Discharges (expires June 7, 2000)
27. Stream and Wetland Restoration Activities
28. Modifications of Existing Marinas
29. Single-Family Housing
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Projects
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Residential, Commercial, and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

**APPENDIX 3:
SAMPLE LANGUAGE FOR USE IN LEASE CONSTRUCTION AND
OTHER LEASE ACTIONS INVOLVING DISCHARGES TO WETLANDS**

Pursuant to Wetlands Desk Guide Section 3.3.2, offerors invited to submit best and final offers are to include in their offer either a written determination that selection of the offer will not result in the discharge of fill into a wetland or a qualified written estimate of the cost of obtaining written COE authorization for such discharge. Wetland determinations and cost estimates must be based upon wetland delineations performed by, or signed statements from, the COE or a certified delineator.

The following is standard language for use in ensuring that offerors provide the requisite information:

“All initial offers shall state the likelihood that the project will result in a discharge of fill into a wetland.”

“All ‘Best and Final’ offers shall include:

- (1) either a written
 - i. determination that selection of the offer will not result in the discharge of fill into a wetland, OR
 - ii. estimate of the cost of obtaining and complying with a written COE authorization for the discharge.

AND

- (2) either
 - i. a wetland delineation performed by the COE or a COE-certified delineator, OR
 - ii. if a delineation is not necessary, a signed statement from the COE.”

**APPENDIX 4:
GENERAL SERVICES ADMINISTRATION (GSA)
SCOPE OF WORK
FOR WETLAND DELINEATION**

1.0 INTRODUCTION

This Scope of Work (SOW) describes the services that shall be performed to provide the General Services Administration (GSA) with a wetland delineation for a period of performance from [add start and end dates]. The contractor shall complete the tasks as described in this SOW. The contractor shall supply all personnel, services, materials, equipment, technical and management support required to perform the work described in this SOW. The contractor shall conduct management and planning functions during the course of the effort. The contractor shall plan activities, schedule activities and milestones, describe the status of resources, report on activity and progress toward accomplishing objectives, and document the results of project efforts.

2.0 PURPOSE

A permit is required from the U.S. Army Corps of Engineers (USACE) before any action is taken that may result in the discharge of dredge or fill material into waters of the United States or when work is proposed within navigable waters of the United States (Clean Water Act, Section 404, 33 United States Code (U.S.C.) 1344 (Section 404); Rivers and Harbors Act, Section 10, 33 U.S.C. 403 (Section 10); Title 33 Code of Federal Regulations (CFR) 320-330). This SOW outlines the basic requirements for conducting a wetland delineation under Section 404 and Section 10 where GSA has proposed an action that may potentially result in the discharge of dredge or fill material into waters of the United States, including wetlands. A wetland delineation is required to obtain a permit from the USACE prior to any work which may result in the discharge of dredge or fill material into waters of the United States, including wetlands. A wetland delineation alone does not satisfy the requirements to obtain a permit from the USACE. The GSA is committed to compliance with all regulations and Executive Orders applicable to wetlands, including but not limited to the Clean Water Act (CWA), the Coastal Zone Management Act (CZMA), the Rivers and Harbors Act (RHA) and the National Environmental Policy Act (NEPA), and EO 11990, entitled "Protection of Wetlands," May 24, 1977.

3.0 SITE-SPECIFIC PROJECT DESCRIPTION

Add specific details of the project here, such as location, approximate size, etc. For example: "GSA proposes to construct a Federal Office Building of square foot 245,000 gsf in East Wetlands, North Carolina, and is preparing an Environmental Impact Statement (EIS) to determine if the proposed action could significantly affect the quality of the environment. One proposed location may contain wetlands, and construction of the building and/or support structures (such as the parking lot) could potentially impact any wetlands present at the site. The government does not own the proposed site. The site is located on approximately 6.2 acres, accessible along Old Swampy Road between Marsh Highway and Bogsville Road (see attached map)."

4.0 CERTIFICATIONS

The contractor conducting the wetland delineation on behalf of GSA shall supply personnel who are certified to perform a wetlands delineation in [add name of State where site is located]. The contractor's personnel shall possess provisional certifications obtained by successfully passing the wetland delineator certification test, administered by the USACE district that corresponds to the GSA region where the work is being performed. A provisionally certified wetland delineator should be familiar with both the USACE district where the work is being performed and its personnel and vice versa. [Note: this gives the USACE district and GSA a high degree of confidence in the wetland delineator and establishes a high degree of confidence between the public and private sectors.]

5.0 PROCEDURES

5.1 For any given parcel of land where wetlands are suspected, a wetland evaluation of the property for USACE jurisdictional wetlands should be conducted. The break between jurisdictional wetlands and non-regulated uplands is determined by examining vegetation, soils, and hydrologic indicators as outlined in the 1987 edition of the USACE Wetland Delineation Manual, and the appropriate regional appendices. Since vegetation will vary significantly depending on the type of wetland (i.e., Intertidal Marine, Palustrine, or Riverine), and by region, the contractor shall utilize a list of wetland indicator plant species appropriate for the type of wetland being delineated and that region. [Note: Lists of wetland indicator plants species by region is available from the USACE District Office, The PLANTS database (<http://plants.usda.gov/plants>), U.S. Department of Agriculture, Natural Resources Conservation Service, National Plant Data Center, Baton Rouge, LA 70874-4490; and the

National List of Vascular Plant Species that Occur in Wetlands: 1996 National Summary,
(<http://www.nwi.fws.gov/bha/>), U.S. Department of the Interior, Fish and Wildlife Service.]

If wetlands are determined to be located within a given parcel of land, the boundary of such wetlands shall be delineated in the field using equipment and tools normally used and appropriate for this purpose. This includes, but is not limited to, surveyor's ribbon, pin flags, paint, stakes, Global Positioning System (GPS) units, professionally certified surveyors, or other means to establish the break between jurisdictional wetlands and non-regulated uplands on the parcel in question.

5.2 A map identifying the area determined to be wetlands shall be produced in sufficient detail as to be utilized as supporting documentation acceptable to the USACE in a permit application.

5.3 Upon completion of the wetland delineation the contractor shall submit a request, along with all applicable supporting documentation, to the Regulatory Functions Branch, local district USACE, asking for written confirmation of the delineated wetland (be aware that, due to workload priorities, some districts only accept wetlands delineations when they accompany a permit application; contact the appropriate district office for more information). The contractor shall request and schedule at this time a field visit from a USACE Regulatory Functions Branch representative. The contractor's representative who was in charge of the delineation in the field shall accompany the GSA Contract Officer's Representative (COR) or other GSA project representative to the USACE field visit. The contractor shall be responsible for providing plans, maps, sketches, and other material which was produced from the field-based wetlands delineation during the USACE field visit.

5.4 At the conclusion of the site visit, the contractor shall secure in writing from the USACE, on USACE letterhead, confirmation of the wetland delineation which references a specific plan or map where the delineation is shown. Securing written confirmation from USACE of the jurisdictional wetland boundary will serve as a five-year guarantee to GSA that the scope of jurisdiction will not change under Section 404 of the Clean Water Act, provided new information, not previously considered, is not presented. USACE written confirmation is often required by local jurisdictions prior to project approval at the county or municipal levels.

6.0 DELIVERABLES

The wetland delineation contractor shall provide the following products to GSA:

6.1 A *Wetland Delineation Report* that explains how the wetland boundaries were derived and why they are accurate. The report shall include the methodology for the physical wetland delineation that was conducted in the field, baseline data obtained from National Wetland Inventory Maps, soil surveys, state wetland maps, Federal Emergency Management Agency (FEMA) Floodplain maps (Flood Insurance Rate Maps), and topographic maps, GPS or other surveys. The report shall also include a plan that indicates the boundaries and topography for the parcel in question and a map that shows the delineated wetland or other waters of the United States that occur on the property. If the contractor evaluates a parcel for GSA for jurisdictional wetlands and none are found, a *Wetland Delineation Report* shall still be required to be submitted to GSA and should explain why the technical criteria for jurisdictional wetlands were not met on the study site. Attachment 1 provides the recommended format for the *Wetland Delineation Report*.

6.2 Summary of USACE field visit including any USACE comments, suggestions, or conclusions.

6.3 Letter from USACE confirming the delineated wetland, or confirming that no jurisdictional wetlands were encountered.

6.4 GSA may wish to request that the contractor submit Section 404 permit application materials to USACE Regulatory Functions Branch when GSA proposes activity which may result in the discharge of dredge or fill materials into waters of the United States.

6.5 Monthly Financial and Management Reports. The contractor shall provide monthly status reports throughout the performance of this SOW. These reports shall include a summary of work accomplished under each element of Section 5.0 of this SOW, activities planned for the next reporting period for each element of Section 5.0 of this SOW, an estimate of the percent of project activities completed, and any problems encountered that may hinder completion of the wetland delineation within the period of performance.

6.6 Performance and Cost Report. The contractor shall submit a monthly Performance and Cost Report.

6.7 General Requirements. The contractor shall provide one electronic and ___ hard copies of all draft and final deliverables. All “hard copy” deliverables will be submitted on recycled-content paper, and printed double-sided.

7.0 GSA POINTS OF CONTACT

Mr. Joe Moneybags
Contracting Officer's Representative (COR)
General Services Administration
Public Buildings Service
Region 12
Charlotte, NC 99999
Phone Number: (123) 456-7890
Fax Number: (123) 456-7891

Ms. Tree Hugger
Project Manager/Technical Point of Contact
General Services Administration
Public Buildings Service
Region 12
Charlotte, NC 99999
Phone Number: (123) 456-7890
Fax Number: (123) 456-7891

Attachment 1 - Recommended Report Format

- I. Introduction
 - A. Purpose of the delineation
 - B. Site location (map)
 - C. Date of site visit(s)
 - D. Name(s) and qualifications of delineator(s)
- II. Methods
 - A. Brief description of method used
 - B. Sources of existing information used
- III. Results and Discussion
 - A. Description of site
 - 1. Topography
 - 2. Plant communities
 - 3. Soils mapped and found
 - 4. Hydrology information
 - 5. Existing wetland maps
 - B. Findings
 - 1. Types of wetlands identified
 - a. Description
 - b. Locations
 - c. Area
 - d. Contrast with non-wetland
 - e. How boundary was chosen
 - 2. Types of other waters identified
 - a. Description
 - b. Locations
 - c. Area
 - d. Contrast with non-wetland
 - e. How boundary was chosen
- IV. Conclusion
 - A. Brief summary of total area and types of wetlands and other regulated waters
 - B. Statement regarding the need for permits
- V. Literature Cited
- VI. Appendix with field data sheets and map showing locations from which data was collected.

APPENDIX 5: PERTINENT AGENCIES

U.S. Fish and Wildlife Service

David Smith, Executive Director
North American Waterfowl & Wetlands Office
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Mail Stop 110 ARSLQ
Arlington, VA 22203
(703) 358-1784

U.S. Environmental Protection Agency

Clay Miller, Environmental Protection Specialist
U.S. Environmental Protection Agency
Attn: Wetlands Division
401 M Street, SW
Mail Stop 4502-F
Washington, DC 20460
(202) 260-6464

U.S. Army Corps of Engineers

Mr. Kirk Stark
Chief, Program Implementation Section
Army Corps of Engineers
20 Massachusetts Avenue, NW
Washington, DC 20314-1000
(202) 761-1786

U.S. Army Corps of Engineers District Regulatory Offices

ALASKA

U.S. Army Corps of Engineers, Alaska District
Attention: CEPOA-CO-RF
P.O. Box 898
Anchorage, AK 99506-0898
Phone: 907-753-2712
FAX: 907-753-5567

ALBUQUERQUE

U.S. Army Corps of Engineers, Albuquerque District
Attention: CESPA-OD-R
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435
Phone: 505-342-3283
FAX: 505-342-3498

BALTIMORE

U.S. Army Corps of Engineers, Baltimore District
Attention: CENAB-OP-R
P.O. Box 1715
Baltimore, MD 21203-1715
Phone: 410-962-3670
FAX: 410-962-8024

BUFFALO

U.S. Army Corps of Engineers, Buffalo District
Attention: CELRB-CO-S
1776 Niagara Street
Buffalo, NY 14207-3199
Phone: 716-879-4313
FAX: 716-879-4310

CHARLESTON

U.S. Army Corps of Engineers, Charleston District
Attention: CESAC-CO-P
P.O. Box 919
Charleston, SC 29402-0919
Phone: 843-727-4330
FAX: 843-727-4445

CHICAGO

U.S. Army Corps of Engineers, Chicago District
Attention: CELRC-CO-R
111 North Canal Street
Suite 600
Chicago, IL 60606-7206
Phone: 312-353-6428
FAX: 312-353-4110

DETROIT

U.S. Army Corps of Engineers, Detroit District
Attention: CELRE-CO-L
P.O. Box 1027
Detroit, MI 48231-1027
Phone: 313-226-2432
FAX: 313-226-6763

FT. WORTH

U.S. Army Corps of Engineers, Ft. Worth District
Attention: CESWF-EV-R
P.O. Box 17300
Ft. Worth, TX 76102-0300
Phone: 817-978-2681
FAX: 817-978-7545

GALVESTON

U.S. Army Corps of Engineers, Galveston District
Attention: CESWG-CO-R
P.O. Box 1229
Galveston, TX 77553-1229
Phone: 409-766-3930
FAX: 409-766-3931

HUNTINGTON

U.S. Army Corps of Engineers, Huntington District
Attention: CELRH-OR-F
502 8th Street
Huntington, WV 25701-2070
Phone: 304-529-5487
FAX: 304-529-5085

HONOLULU

U.S. Army Corps of Engineers, Honolulu District
Attention: CEPOH-CO-O
Building 230, Fort Safer
Honolulu, HI 96858-5440
Phone: 808-438-0030
FAX: 808-438-4060

JACKSONVILLE

U.S. Army Corps of Engineers, Jacksonville District
Attention: CESAJ-RD
P.O. Box 4970
Jacksonville, FL 32232-0019
Phone: 904-232-1666
FAX: 904-232-1684

KANSAS CITY

U.S. Army Corps of Engineers, Kansas City District
Attention: CENWK-CO-R
700 Federal Building
601 East 12th Street
Kansas City, MO 64106-2896
Phone: 816-983-3990
FAX: 816-426-2321

LITTLE ROCK

U.S. Army Corps of Engineers, Little Rock District
Attention: CESWL-ET-WR
P.O. Box 867
Little Rock, AR 72203-0867
Phone: 501-324-5296
FAX: 501-324-6013

LOS ANGELES

U.S. Army Corps of Engineers, Los Angeles District
Attention: CESPL-CO-R
911 Wilshire Boulevard
P.O. Box 2711
Los Angeles, CA 90053-2325
Phone: 213-452-3425
FAX: 213-452-4196

LOUISVILLE

U.S. Army Corps of Engineers, Louisville District
Attention: CELRL-OP-F
P.O. Box 59
Louisville, KY 40401-0059
Phone: 502-582-6461
FAX: 502-582-5072

MEMPHIS

U.S. Army Corps of Engineers, Memphis District
Attention: CEMVM-CO-G
Clifford Davis Federal Building
Room B-202
Memphis, TN 38103-1894
Phone: 901-544-3471
FAX: 901-544-3266

MOBILE

U.S. Army Corps of Engineers, Mobile District
Attention: CESAM-OP-S
P.O. Box 2288
Mobile, AL 36628-0001
Phone: 334-690-2658
FAX: 334-690-2660

NASHVILLE

U.S. Army Corps of Engineers, Nashville District
Attention: CELRN-CO-F
P.O. Box 1070
Nashville, TN 37202-1070
Phone: 615-736-5181
FAX: 615-736-7145

NEW ENGLAND

U.S. Army Corps of Engineers, New England District
Attention: CENAE-OD-R
696 Virginia Road
Concord, MA 01742-2751
Phone: 978-318-8338
FAX: 978-318-8303

NEW ORLEANS

U.S. Army Corps of Engineers, New Orleans District
Attention: CEMVN-OD-S
P.O. Box 60267
New Orleans, LA 70160-0267
Phone: 504-862-2255
FAX: 504-862-2289

NEW YORK

U.S. Army Corps of Engineers, New York District
Attention: CENAN-OP-R
26 Federal Plaza
New York, NY 10278-0090
Phone: 212-264-3996
FAX: 212-264-4260

NORFOLK

U.S. Army Corps of Engineers, Norfolk District
Attention: CENAO-CO-R
803 Front Street
Norfolk, VA 23510-1096
Phone: 757-441-7068
FAX: 757-441-7678

OMAHA

U.S. Army Corps of Engineers, Omaha District
Attention: CENWO-OP-N
P.O. Box 5
Omaha, NE 68101-0005
Phone: 402-221-4211
FAX: 402-221-4939

PHILADELPHIA

U.S. Army Corps of Engineers, Philadelphia District
Attention: CENAP-OP-R
100 Penn Square East
2nd and Chestnut Street
Philadelphia, PA 19107-3396
Phone: 215-656-6725
FAX: 215-656-6724

PITTSBURGH

U.S. Army Corps of Engineers, Pittsburgh District
Attention: CELRP-OP-F
Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
Phone: 412-395-7155
FAX: 412-644-4211

PORTLAND

U.S. Army Corps of Engineers, Portland District
Attention: CENWP-OP-G
P.O. Box 2946
Portland, OR 97208-2946
Phone: 503-808-4371
FAX: 503-808-4375

ROCK ISLAND

U.S. Army Corps of Engineers, Rock Island District
Attention: CEMVR-OD-S
Clock Tower Building
Rock Island, IL 61201-2004
Phone: 309-794-5370
FAX: 309-794-5191

SACRAMENTO

U.S. Army Corps of Engineers, Sacramento District
Attention: CESPK-CO-R
1325 J Street
Sacramento, CA 95814-2922
Phone: 916-557-5252
FAX: 916-557-6877

ST. LOUIS

U.S. Army Corps of Engineers, St. Louis District
Attention: CEMVS-CO-F
1222 Spruce Street
St. Louis, MO 63103-2833
Phone: 314-331-8575
FAX: 314-331-8741

ST. PAUL

U.S. Army Corps of Engineers, St. Paul District
Attention: CEMVP-CO-R
Army Corps of Engineers Centre
190 Fifth Street East
St. Paul, MN 55101-1638
Phone: 651-290-5354
FAX: 651-290-5330

SAN FRANCISCO

U.S. Army Corps of Engineers, San Francisco District
Attention: CESPN-CO-R
333 Market Street, 8th floor
San Francisco, CA 94105-2197
Phone: 415-977-8460
FAX: 415-977-8483

SAVANNAH

U.S. Army Corps of Engineers, Savannah District
Attention: CESAS-OP-F
P.O. Box 889
Savannah, GA 31402-0889
Phone: 912-652-6768
FAX: 912-652-5995

SEATTLE

U.S. Army Corps of Engineers, Seattle District
Attention: CENWS-OD-RG
P.O. Box 3755
(4735 East Marginal Way South) Seattle, WA 98124-3755
Phone: 206-764-3495
FAX: 206-764-6602

TULSA

U.S. Army Corps of Engineers, Tulsa District
Attention: CESWT-OD-RF
P.O. Box 61
Tulsa, OK 74121-0061
Phone: 918-669-7401
FAX: 918-669-4306

VICKSBURG

U.S. Army Corps of Engineers, Vicksburg District
Attention: CEMVK-OD-F
4155 Clay Street
Vicksburg, MS 39183-3435
Phone: 601-631-5276
FAX: 601-631-5459

WALLA WALLA

U.S. Army Corps of Engineers, Walla Walla
District
Attention: CENWW-OP-RF
201 North 3rd Street
Walla Walla, WA 99362
Phone: 509-527-7151
FAX: 509-527-7823

WILMINGTON

U.S. Army Corps of Engineers, Wilmington
District
Attention: CESAW-CO-E
P.O. Box 1890
Wilmington, NC 28402-1890
Phone: 910-251-4630
FAX: 910-251-4025